1948. File No. OG 1A/48
G-35-48

Legal Dept.

G BRANCH

Subject:— Opinions under the Government of India Act 1935

1948

P-3/E

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Gen. 194 e.

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C O N T E N T S.

Legal Department File No. O/G.I.A./46

Sr.No.	R.I./O.No.	Subject	Pages
		Opinions under the Govt. of India Act. 1935.	
1.	1330 7-2-46	Section 297 Whether the Order banning the movement of kuyas outside the province is inconsistent with the provisions of section 297.	1-2
2.	4152 29-4-46	Section 270 The Criminal Procedure Code. sec. 177 Whether previous sanction of Government would be required for the prosecution of the Station Master and the Assistant Station Master for committing an offence of abetting the illegal transport while on duty.	3-4

S.A:K.
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Office of the R.L.A.

The C.S.D. holds that the ban on the movement of kapas outside the Province imposed under S.N. F.D.(S) No. 23(3)-IV dated 1-2-44 though not specifically cancelled does not subsist as it is inconsistent with the provisions of section 297 of the Government of India Act, 1935. R.L.A.'s advice is sought on this point.

If the object and scope of the order in question is to regulate or control in some degree the conduct and liability of the persons engaged in removing kapas out of the province, such an order, I think, cannot be ~~xxxx~~ challenged on the ~~xxxx~~ ground that it restricts the export of kapas from the province. On the contrary such an order would be an aid in the removal of goods from the province. As observed by Richh J. in the case of King Vs. Vissard, 50 C.L.R. 30 at p. 52 , a regulation of an a incident of commerce which is calculated to guide the stream but not to obstruct it, does not impose a direct ~~xxxxx~~ restraint merely because it conditionsthe individuals's exercise of rights with which xx previously existed. Also so long as licences are freely (and perhaps cheaply) granted, the order would not fall foul of the constitutional provision in section 297(1)(a). But if the order is intended also for banning export, it would clearly offend against section 297 of the Government of India Act, and as such it would be advisable to cancel the same.

Sd/-I.M.Lad
6-2-

O... Remembrancer of Legal Affairs.

U.R. to C.S.D.No. 1330, dated 7-2-45.

S.A.K. / 9-7/4 C.

Office of the R.I.A.

Section 270 has been now omitted from the Government of India Act, 1935. The sanction of the Governor General under section 197 of the Criminal Procedure Code would be necessary only if the Station Master and Assistant Station Master cannot be removed from office except with the sanction of the Governor General.

Sd/- P.M.Lad
27-4

O.C. Remembrancer of Legal Affairs.

U.O.R. to C.S.D., No. 4152, dated 29th April 1948.

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